

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1586 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANCHHODBHAI DEVKARANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK for Petitioner

Mr. Y.F.Mehta APP for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/10/96

ORAL JUDGEMENT

This application is filed by the first informant in CR No. 209/94 registered by the police of Botad Police Station. The respondent no.5 Ganshyambhai Kalyanbhai is the former son-in-law of the present petitioner. The petitioner's daughter Kanchangauri was given in marriage to said respondent no.5. It seems that

said marriage was broken and therefore, there were civil and criminal proceedings between the parties. It is claimed by the petitioner that ultimately there was also a divorce as per the custom of the caste. But the civil and criminal proceedings are still pending between the parties. It is claimed that on 17.11.94, the respondent no.5 and 3 others had committed criminal trespass in the house and had physically assaulted him. It is claimed that though he lodged a complaint and offence was registered, police have not taken any cognizance and they have not arrested the respondent no.5. He therefore, filed the present application alleging that proper investigation is not carried out and that investigating officer was negligent in not arresting the respondent no.5 and though there is evidence to show that the offence is committed by the accused is punishable u/ss. 307 and 326 IPC the police has not taken any cognizance and therefore, in the circumstances they should be directed to take necessary steps for arresting the respondent no.5 and for carrying out proper investigation and to add section 307 and 326 IPC in the charge sheet filed before the learned Magistrate

2. The record clearly shows that the police have already not submitted charge sheet against the respondent no.5 and 2 other persons . Respondent no.5 has been shown as absconding accused. Police have filed charge sheet u/ss. 324,452 and 114 IPC. If the complainant's claim that the offence committed by then accused is punishable under sections 307 and 326 IPC, then he has got opportunity to move before the learned Magistrate by filing specific application mentioning therein necessary materials which justifying his acquisation for taking cognizance for the offence punishable under those sections. When the complainant will be filing such an application, the Magistrate has to decide the same on merits after taking into consideration the materials on record as well as the materials which might be produced by the complainant in support of his application. If he finds from the materials on record that the offence is punishable u/ss. 307 IPC, then he is bound to commit the accused to the court of sessions by passing necessary order in the said application and that is what is expected of the learned Magistrate when such application is filed

3. The respondent no.5 is shown as absconding accused in the charge sheet. Therefore, the learned Magistrate should take appropriate steps for issuing a proclamation of he being absconding accused and to attach and seize his property as per the provisions of Cr.P.C.

The complainant is at liberty to move the learned Magistrate for taking such steps.

4. In view of these observations this application is rejected summarily.

(S.D.Pandit.J)